

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

NANCY AUVIL,

Petitioner,

v.

UNKNOWN,

Respondent.

Civil No. 11-1013 MMA (BGS)

**ORDER DISMISSING PETITION
WITHOUT PREJUDICE AND WITH
LEAVE TO AMEND**

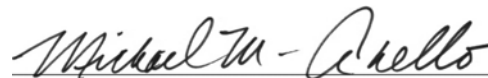
Petitioner, a state prisoner represented by counsel, has submitted a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254, and paid the \$5.00 filing fee. Review of the Petition reveals that Petitioner has failed to name a proper respondent. On federal habeas, a state prisoner must name the state officer having custody of him as the respondent. *Ortiz-Sandoval v. Gomez*, 81 F.3d 891, 894 (9th Cir. 1996) (citing Rule 2(a), 28 U.S.C. foll. § 2254). “The ‘state officer having custody’ may be ‘either the warden of the institution in which the petitioner is incarcerated . . . or the chief officer in charge of state penal institutions.’” *Id.* (quoting Rule 2(a), 28 U.S.C. foll. § 2254 advisory committee’s note).

Here, Petitioner has failed to name a Respondent. In order for this Court to entertain the Petition filed in this action, Petitioner must name the warden currently in charge of the state correctional facility in which Petitioner is presently confined or the Secretary of the California Department of Corrections and Rehabilitation. *Brittingham v. United States*, 982 F.2d 378, 379 (9th Cir. 1992) (per curiam).

1 Accordingly, the Court **DISMISSES** the Petition without prejudice and with leave to
2 amend due to Petitioner's failure to name a proper respondent. To have this case reopened,
3 Petitioner must file a First Amended Petition **no later than July 17, 2011** in conformance with
4 this Order.

5 **IT IS SO ORDERED.**

6
7 DATED: May 20, 2011

8 

9 Hon. Michael M. Anello
10 United States District Judge

11 Copies to: ALL PARTIES
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28